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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,419	07/18/2003	Walter Pokorny	IVd06US	4939
7590 John C. Thompson 69 Grayton Road Tonawanda, NY 14150	06/11/2007		EXAMINER LUK, EMMANUEL S	
			ART UNIT 1722	PAPER NUMBER
			MAIL DATE 06/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/622,419	POKORNY ET AL.
	Examiner Emmanuel S. Luk	Art Unit 1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 May 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) 18 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 and 20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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4. Claims 1-17 and 20 are rejected under 35 U.S.C. 103(a) as obvious over Christy et al (5786578) in view of St Phillips (4933525).

Christy teaches the claimed device being a container having a base portion (2), removable container cover (3), temperature indicator strip (4) and being placed into a device having an energy source that would irradiate the mass within the container (c. 1, l. 7-9). Additionally, the container cover (3) can also provide as a cover than can shield from irradiation of light.

Christy fails to teach the strip being spaced away from the central region and the color strips.

Phillips teaches the temperature indicators (12, 26) with the indicators being supported by a base and also spaced away from the central region via the walls (16) as seen in Figures 4 and 5.

It would be obvious for one of ordinary skill in the art to recognize that the apparatus taught by Christy also covers the claimed apparatus that is used for polymerization of material in dental restoration and it would also be obvious for one of ordinary skill in the art to modify Christy with the spaced indicators and the colored strip indicators as taught by Phillip because it places away from direct contact of the product to be heated.

That the use of an apparatus is an intended use and as such: Intended use has been continuously held not to be germane to determining the patentability of the apparatus, *In re Finsterwalder*, 168 USPQ 530. That the claimed invention is used for dental restoration is noted, however it does not further limit the structure.

5. Faries teaches a temperature sensing strip that includes a temperature scale, changes color or illuminate the scale indicators to visually indicate the temperature within the container (Abstract). It teaches an alternative indication means that provides additional breakdown of the temperature scale instead of the simpler indication provided by Christy of "OK" and "Too Hot".

***Response to Arguments***

6. Applicant's arguments with respect to claims 1-17 and 20 have been considered but are moot in view of the new ground(s) of rejection.

The applicants argue that the apparatus can not be used to practice another and materially different process. Examiner disagrees with the assessment since it is clearly stated in the MPEP §2114 and in §2112 that in apparatus claims, the prior art references merely needs to teach the claimed structure. That the claimed invention is for use for dental restoration is an intended use of the apparatus and it does not further limit the apparatus since structural limitations is needed and prior art references merely need to teach the claimed structural features. The claimed test element comprises the base element and temperature indicating means which the Christy reference teaches said elements comprising the test element. In regards to the spacing of the temperature indicating means, the claimed invention merely states that is spaced a distance sufficiently great so that the temperature indicating means cannot be in contact, as seen in Figure 3 of Christy the material is not in contact with the lid 3 upon which the temperature

The Phillips references teaches the newly added limitation of the temperature indicating means being a distance from the product as seen by the interposing wall. As seen, the Phillips reference and the Christy reference are analogous art.

Faries is mentioned as a pertinent prior art reference that temperature indicating strips using color is known for use on containers.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Elele 5720555.
  
8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel S. Luk whose telephone number is (571) 272-1134. The examiner can normally be reached on Monday-Fridays from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EL

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6-7-07